

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE

establishing the uniform definitions, standards, and procedures to be followed by all land managers/persons in providing protection and recovery efforts for the Utah Prairie Dog / Cynomys Parvidens located on lands in Garfield County.

ESTABLISHING REQUIREMENTS

TO SURVEY AND INVENTORY UTAH PRAIRIE DOG HABITAT IN GARFIELD COUNTY,

TO REVIEW AND APPROVE / DENY PROPOSED UTAH PRAIRIE DOG PROTECTION AND RECOVERY PRACTICES IN GARFIELD COUNTY,

TO PROVIDE ADVICE AND INFORMATION TO COUNTY AND OTHER GOVERNMENTAL OFFICIALS AND

TO SUPPORT ENFORCEMENT OF FEDERAL, STATE AND LOCAL ENDANGERED SPECIES PRESERVATION LAWS.

ADOPTING THIS ORDINANCE AS PART OF THE COUNTY'S GENERAL PLAN

BE IT ORDAINED BY THE County Commission OF Garfield County, STATE OF UTAH, AS  
FOLLOWS:

**UTAH PRAIRIE DOG RECOVERY  
ORDINANCE**

**Sec. 1 Utah Prairie Dog Recovery Ordinance**

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**Sec. 1.1 Purpose.**

(a) This ordinance implements provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat.884), as amended by establishing uniform definitions, standards, and procedures to be followed by all land managers/persons in providing protection and recovery efforts for Utah Prairie Dogs located on lands in Garfield County. These regulations enable land managers and local officials to protect Utah Prairie Dogs, taking into consideration State and Federal statutes, through approvals authorizing protection and recovery of Utah Prairie Dogs, through penalties for unauthorized actions, through provisions for the development, collection and preservation of data, and through provisions for sharing of information about specific resources when disclosure would create a benefit to the resource.

(b) The ordinance does not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, grazing, timber harvesting and other multiple uses of the public lands.

(c) The ordinance establishes a Garfield County register of Utah Prairie Dog critical habitat and establishes procedures for its use.

(d) The ordinance establishes criteria for designating Utah Prairie Dog habitat as *Outstandingly Remarkable* or *Important - Relevant* in connection with federal land management processes and special designation evaluations.

**Sec. 1.2 Authority.**

(a) This ordinance is compatible with existing law which requires that the Federal land managers jointly develop uniform rules and regulations for carrying out the purposes of Federal protection acts.

(b) Federal law provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations as may be necessary for carrying out the purposes of Federal preservation acts.

(c) In addition to federal regulations, the Utah State Legislature has recognized the value and interest of local governments in land use planning. Utah Code Annotated 17-27a-102 authorizes Counties to:

(1) Provide for health, safety, and welfare, and promote prosperity; and

(2) Insure proper development and utilization of lands by enacting regulatory measures including ordinances.

(d) U.C.A 17-50-316 authorizes County Commissions to implement necessary laws and ordinances for the protection of the public health and welfare within their jurisdiction including the development of resources.

(e) 16 U.S.C. 1535(f) permits local laws and regulations that may be more restrictive than the Endangered Species Act.

### **Sec. 1.3 Definitions.**

As used for purposes of this ordinance:

(a) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring the species to the point at which it is no longer protected by the Endangered Species Act. Such methods and procedures include, but are not limited to all activities associated with scientific resource management such as research, counting, law enforcement, habitat acquisition, enhancement and maintenance, propagation, live trapping, plague abatement, transplantation, transporting, predator abatement, and authorized taking.

(b) Critical Habitat

(1) means the most important 5000 acres of federal land:

(A) identified as occupied habitat on which are found sufficient populations necessary for delisting; or

(B) identified as mapped habitat on which are found features which are essential to support sufficient populations necessary for delisting;

(2) means other lands approved by the Garfield County Commission if:

(A) the lands contribute to the acreage required for delisting;

(B) conditions comply with other requirements of this ordinance

(3) cannot apply to non federal lands unless approved by the County Commission.

(4) cannot apply to more than 6000 acres in Garfield County unless approved by the County Commission.

(5) shall not include the entire geographical area which can be occupied by the species.

(c) Federal Agency means any department, agency, or instrumentality of the United States.

(d) Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(e) Outstandingly Remarkable / Relevant-Important means: rare, unique or regionally exemplary. Federal regulation is largely silent on definitions for outstandingly remarkable/relevant- important values. Minimum standards for Utah Prairie Dogs in Garfield County will be approved by the Garfield County Commission on a case by case basis. No Outstandingly Remarkable / Relevant-Important values exist without Commission approval.

(f) Person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity.

(g) Public land means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except Indian lands.

(h) Secretary means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Agriculture as may be applicable.

(i) Species means the Utah Prairie Dog / *Cynomys Parvidens*.

(j) State means the State of Utah.

(k) State agency means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of land, fish, plant, or wildlife resources within the State or acts on behalf of the State.

(l) Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, to attempt to engage in any such conduct, or to violate this ordinance.

#### **Sec. 1.4 Prohibited acts and criminal penalties.**

(a) Except as approved by the Garfield County Commission it is unlawful for any person to:

(1) import, possess, sell, deliver, receive, carry, transport, transplant, translocate, or ship the species by any means whatsoever in Garfield County;

(2) export or allow the migration of the species from occupied, mapped or protected federal lands, or from other protected lands to unmapped or unprotected lands in Garfield County;

(3) take the species within Garfield County;

- (4) sell or offer for sale in interstate or foreign commerce the species; or
- (5) violate any regulation pertaining to this ordinance.
- (6) fail to perform adequate measures to protect the species from plague and/or predators if the population is located on critical habitat or protected lands.

- (b) A person is guilty of a class B misdemeanor if that person:
  - (1) Violates this part of the ordinance: or
  - (2) Counsels, solicits, or employs any other person to violate this part.

#### **Sec. 1.5 Approval requirements and exceptions.**

(a) Any person proposing to perform conservation activities or to carry out activities associated with conservation of Utah Prairie Dogs in Garfield County shall apply to the Garfield County Commission for approval of the proposed effort. Proponents shall not begin any activities until approval has been issued. Garfield County may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in Section 1.8.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on Garfield County lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the conservation of Utah Prairie Dogs, even though those activities might incidentally result in the disturbance of species related resources. General earth-moving, excavation, road work, mining, drilling conducted under a permit or other authorization shall not be construed to mean conservation or take as used in this part. This exception does not, however, affect the person's responsibility to comply with other authorities which protect the species.

(2) No permit shall be required under this part for any person observing for private purposes or public school purposes prairie dog habitat or activity, provided that such observation does not result in significant permanent disturbance of biological resources.

(c) Persons carrying out official agency duties under a Federal/State land manager's direction, associated with the conservation of the species, need not follow the permit application procedures if the Federal/State Land Manager has obtained County Commission approval for such activities for lands within his/her jurisdiction. However, the Federal/State land manager shall insure that permit provisions are met if activities affect populations, habitat and successful delisting of the species.

#### **Sec. 1.6 Application for approvals and information collection.**

(a) Any person may apply to Garfield County for approval to conserve, manage or to impact Utah Prairie Dogs in Garfield County and to carry out activities associated with such actions.

(b) Each application for an approval shall include:

(1) The nature and extent of the work proposed, including how and why it is being conducted, proposed time of performance, location maps, benefits for delisting the species, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work and carrying out the terms and conditions of the approval, institutional affiliation, if any, and evidence of education, training, and experience.

(3) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including other permits issued for the work, evidence of logistical support and other facilities.

(4) Where the application is for the development of new occupied habitat in Garfield County:

(A) The name of the land management agency where the applicant proposes to perform the work.

(B) Reasons, if any, why existing resources cannot be used.

(C) Proposed plans for advancing the species' status toward delisting.

(5) Where the application is for trapping, translocating, propagating of Utah Prairie Dogs or designation of land for conservation purposes: 4) Where the application is for the development of new occupied habitat in Garfield County:

(A) The scientific information justifying the action.

(B) Resources allocated for in kind replacement and/or equal compensation for loss of other resources.

(C) Alternatives available for completing the action without impacting other resources.

(D) How the action complies with Garfield County's no net loss of private lands policy and this ordinance.

(c) Garfield County may require additional information, pertinent to resource protection responsibilities, to be included in the application for approval and shall so inform the applicant.

#### **Sec. 1.7 Issuance of approvals.**

(a) Garfield County may issue approval for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence relative to the type and scope of the work;

(2) The proposed work furthers Garfield County' policies regarding Utah Prairie Dogs and is in the public interest;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with the County's General Management Plan or if inconsistent no other reasonable alternative exists and adequate replacement/compensation for Utah Prairie Dog associated activity is being provided;

(4) The proponent understands and is willing to comply with all Federal, State, and Local laws pertaining to Utah Prairie Dogs;

(5) Every reasonable effort has been made to improve the opportunity, benefit, use, and enjoyment of lands impacted by Utah Prairie Dogs for Garfield County's residents and visitors.

(b) When the area of the proposed work crosses jurisdictional boundaries, so that approval applications must be submitted by more than one Federal and/or land manager, the Federal and/or land managers shall coordinate permitting requirements with the County.

#### **Sec. 1.8 Terms and conditions of approvals.**

(a) In all approvals issued, Garfield County may specify:

- (1) The nature and extent of work;
- (2) The name of responsible individual(s);
- (3) The location and limits of the work;
- (4) Project record and data collection requirements; and/or
- (4) Public education, interpretive and/or reporting requirements.

(b) The County may specify such terms and conditions as deemed necessary to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to activities authorized under the approval.

(c) Initiation of work or other activities under the authority of the approval signifies the proponent's acceptance of the terms and conditions of the permit.

#### **Sec. 1.9 Suspension and revocation of approvals.**

(a) Garfield County may suspend an approval issued pursuant to this ordinance upon determining that the proponent has failed to meet any of the terms and conditions of the approval or has violated Federal, State or Local law. The County shall provide written notice to the proponent of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(b) The County may revoke an approval upon the proponent's conviction under laws protecting the species, or upon determining that the proponent has failed after notice under this section to correct the situation which led to suspension of the approval.

(c) Garfield County may suspend or revoke an approval without liability to the County, its agents, or employees, when continuation of work under the approval would be in conflict with County Management Plan requirements not in effect when the approval was issued. The County shall provide written notice to the proponent stating the nature of and basis for the suspension or revocation.

#### **Sec. 1.10 Appeals relating to approvals.**

Any affected person may appeal denial of approval, suspension, revocation, and terms and conditions of an approval before the County Commission, or through procedures which may be established pursuant to this ordinance.

#### **Sec. 1.11 Relationship to the Endangered Species Act.**

Issuance of a permit in accordance with this ordinance does not constitute an undertaking requiring compliance with Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat.884), as amended. However, the mere issuance of an approval does not excuse the proponent from compliance with the Endangered Species Act where otherwise required.

**Sec. 1.12 Determination of resource value and cost of restoration and repair.**

a) The resource value of Utah Prairie Dog habitat and resources shall be determined after evaluating information contained in 16 U.S.C. 1544.

(b) The commercial value of Utah Prairie Dog habitat and resources shall be determined after evaluating information contained in 16 U.S.C. 1544 and mitigation credit costs.

(c) The cost of restoration and repair of any Utah Prairie Dog habitat or resources damaged as a result of a violation of this ordinance shall be determined after evaluating information contained in 16 U.S.C. 1544 and mitigation credit costs.

**Sec. 1.13 Mapping schedules.**

(a) Federal and State land managers are required to develop plans and protection measures for Utah Prairie Dogs and to identify lands that contain special status species. These plans are likely to contain the most scientifically valuable information for mapping purposes. Furthermore, Federal and State agencies are required to coordinate planning activities with local governments. Garfield County has identified the transfer of map/population data as a fundamental requirement for coordination and has developed a data transfer schedule follows:

(1) Submittal of critical, occupied and mapped habitat data prior to January 1, 2015;

(2) Submittal of colony count data prior to January 1, 2015;

(3) Submittal of existing and proposed Utah Prairie Dog activities that may be subject to this ordinance prior to January 1, 2015.

(b) Failure to plan, schedule and provide information in accordance with the priorities in this Section without written County approval is:

(1) A violation of the ordinance; and

(2) Inconsistent with the County Management Plan.

**Sec. 1.17 Determination of loss or absence of biologic interest.**

(a) Under certain circumstances, Garfield County may determine that certain habitats or populations are no longer of value, and therefore are not to be considered under this ordinance.

(b) Garfield County may make such a determination if the County finds that the resources are not capable of providing any



benefit to the delisting of the Utah Prairie Dog or related issues.

(c) Prior to making a determination that resources are no longer of value, Garfield County may complete some or all of the following procedures:

(1) A professional evaluation of resources within the area under consideration will be completed.

(2) Federal and State agencies may be requested to recommend whether the resource under consideration contributes to delisting of the species.

(d) The County will make the determination based upon established facts and recommendations of knowledgeable individuals and will document the basis.

(e) The County will make public record of the determination and any future approval requirements for activities associated with the Utah Prairie Dog resource.

(f) Any determination made pursuant to this section shall not affect any person's obligations under other applicable laws or regulations.

#### **Sec. 1.18 Procedural information for securing approvals.**

Information about procedures to secure an approval to impact Utah Prairie Dogs can be obtained from Garfield County

#### **Sec. 1.19 Approval reviews and disputes.**

(a) Any affected person disputing Garfield County's decision with respect to the issuance or denial of an approval, the inclusion of specific terms and conditions in an approval, or the modification, suspension, or revocation of an approval may request the County Commission review the disputed decision and may request a meeting to discuss the decision and its basis.

(b) Any affected person may request a review by an appropriate Federal or State agency regarding any professional issues involved in the County approval decision, and the agency may make a recommendation to Garfield County. Garfield County will consider the recommendation, but may reject it, in whole or in part, for good cause. This request should be in writing, and should state the reasons for the request.